REMARKS

In response to the Office Action dated July 8, 2005, Applicants respectfully request continued examination.

Claims 1, 2, and 4-12 stand rejected under 35 USC 102(e) in view of U.S. Patent No. 6,070,190 (Reps). Applicants respectfully assert that claims 1, 2, and 4-12 are patentable in view of Reps.

Reps discusses techniques that are fundamentally different than those recited in claims 1, 2, and 4-12. Reps discusses a client computer probe configured in accordance with probe configuration parameters to send service requests to a server computer to measure the performance of application services by an application program. Col. 5, lines 24-30. The client computer records information related to the performance of the services of the application program. Col. 5, lines 17-23. The client probe simulates end user activity to provide a "realistic picture of the performance of the application program" so that real-time information can be gathered "based upon an 'end-user's experience of a client-server based application program 203." Col. 10, lines 9-15. Reps acknowledges that the techniques discussed in Reps do not monitor an actual end users actions, but a simulated "end-user." Conversely, claims 1, 2, and 4-10 recite methods and performance management systems that include monitoring a network browser, means for monitoring a network browser, and a client, to obtain performance data indicative of a data transfer request initiated by an actual end-user via a network browser. Thus, in accordance with these claims, a network browser is or can be monitored for actual user activity, while Reps discusses generating and recording only simulated activity. A more realistic and complete view of application performance can be obtained than provided for by Reps. For example, factors not discussed in Reps or measurable using Reps could be measured, such as browser render latency, patterns of application use, frequencies of application use, and unforeseen periods of application congestion or outage. Further, application performance can be improved using knowledge of actual user activity and reaction to application performance, as opposed to Reps' simulated user activity.

Claim 1 recites a method of managing a data access system configured to transfer data over a communication network between a server system and a plurality of user sites

in response to requests from network browsers at the user sites. Reps discusses using a web browser to access information but fails to teach, disclose, or suggest at least monitoring a web browser as recited in claim 1. The method recited in claim 1 includes monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system performed in response to a network browser request initiated by a user of the first user site, the monitoring being controlled by a monitoring agent resident at the first user site. Conversely, Reps discusses that an application program residing on a server computer is monitored by a client computer. Abstract. The Examiner cited Col. 9, line 59 - Col. 10, line 28, and Col. 17, lines 45-63 as teaching the recited monitoring of a network browser. This text, however, discusses that an end-user can obtain application program performance data using a web browser to access a web server computer 508. This text does not teach, disclose, or suggest that the web browser itself is what is monitored as is recited in claim 1. Claim 1 is therefore patentable in view of Reps for at least these reasons.

Claims 2 and 4-10, being dependent upon claim 1 directly or indirectly, or patentable in view of Reps for at least the same reasons that claim 1 is patentable in view of Reps. Further, the Examiner cited Col. 6, lines 37–54 of Reps as relevant to claim 5. This portion of Reps discusses a data element in a first data set that represents response times for different probes of an application program on different servers for a particular day of a designated month may be dynamically linked to a second data set with elements representing the response times of the set of probes monitoring the application program on different servers for the particular day of the designated month. According to this passage, the different data sets can have data elements dynamically linked. This passage does not discuss or suggest filtering of data to pertain to a selected data access system. Claim 5, however, recites receiving data indicative of the performance of a plurality of data access systems and filtering the received data to pertain to a selected data access system. Thus, claim 5 is patentable in view of Reps for at least this further reason.

Independent claim 11 recites a performance management system for managing a data access system configured to transfer data over a communication network between a server system and a plurality of user sites in response to requests from the user sites. The

system includes means for monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system performed in response to a network browser request initiated by a user of the first user site. Conversely, Reps discusses probing servers with formatted probes that simulate activity and do not monitor a network browser at all, let alone to obtain data flowing from a browser request initiated by a user. Thus, Reps does not teach or suggest the recited means for monitoring a network browser for performance data indicative of a data transfer operation performed in response to a network browser request initiated by the user of a user site. Claim 11 is thus patentable in view of Reps for at least these reasons.

Independent claim 12 recites a performance management system that monitors data transferred between at least one remote site and at least one user site. The system includes a network browser disposed on a first user site. The system also includes a client that resides on the first user site and that is configured to collect performance data indicative of a data transfer operation initiated by a network browser request, initiated by a user of the first site, from the network browser. Conversely, Reps discusses probing servers with formatted probes that simulate activity and do not monitor a network browser at all, let alone to obtain data flowing from a browser request initiated by a user. Thus, Reps does not teach or suggest the recited network browser and client configured to collect performance data indicative of a data transfer operation initiated by a network browser request, initiated by a user of the first site, from the network browser. Claim 12 is thus patentable in view of Reps for at least these reasons.

Claim 3 stands rejected under 35 USC 103(a) in view of Reps. Because claim 3 depends indirectly from claim 1, Applicants respectfully assert that claim 3 is patentable in view of Reps for at least the same reasons that claim 1 is patentable in view of Reps.

Claims 13-51 stand rejected under 35 USC 103(a) in view of Reps in view of U.S. Patent No. 6,438,592 (Killian). Applicants previously canceled claims 15, 17, and 25 without prejudice, and thus this rejection is believed not to apply to claims 15, 17, or 25, and indeed the Examiner did not individually address these claims. Applicants respectfully assert that claims 13-14, 16, 18-24, and 26-50 are patentable in view of Reps and Killian.

Independent claim 13 is patentable even if Reps is combined with Killian. Independent claim 13 recites a performance management system that monitors data transferred between at least one remote site and at least one user site. The system includes a web browser on a first user site, and a client application that includes a data gathering module adapted to collect performance data. The performance data is indicative of data transfer operations initiated by network browser requests initiated by a user of the first user site. Conversely, Reps discusses probing servers with formatted probes that simulate activity and do not monitor a network browser at all, let alone to obtain data flowing from a browser request initiated by a user. Thus, Reps does not teach or suggest the recited data gathering module adapted to collect performance data indicative of data transfer operations initiated by a network browser request initiated by a user of the first user site. Killian does not make up for these deficiencies of Reps. Killian discusses a web system that responds to URL requests from client computers by transmitting requested data and performance monitoring instructions that cause the client to send performance messages back indicating the time required for certain acts associated with transmitted data. Col. 3, lines 23-63. Killian does not teach or suggest that a client application should reside on a user site and collect data as recited, nor would this be fairly suggested to a skilled artisan. For at least these reasons, independent claim 13, and claims 14, 16, 18-24, and 26-50 that depend directly or indirectly from claim 13, are patentable in view of Reps in view of Killian.

Claim 20 stands rejected under 35 USC 103(a) in view of Reps. The Examiner cites Col. 6, line 66 - Col. 7, line 13 as teaching a performance management system according to claim 13, wherein the received performance data is used to analyze aggregated end user response based on actions taken within a data access system and wherein the aggregated end user response is used to infer user behavior. The cited text of Reps, however, discusses methods of dynamically linking associated measurements for a particular application program from one or more measurement probes. This text does not discuss or suggest measurements could be used to infer actions taken within a data access system or infer user behavior. Such information is not obtainable with synthetic performance measurements of a data access system as discussed in Reps. Claim 20 is thus patentable in view of Reps for at least these further reasons.

Claim 51 depends directly from claim 1 and is therefore patentable for at least the reasons discussed above with respect to claim 1.

Applicants have added new claim 52. This claim is dependent upon independent claim 13 and is thus patentable for at least the reasons that claim 13 is patentable. Further, claim 52 is patentable because this claim recites that the application data are indicative of at least one of browser imposed latency, user experience, user reaction, and user tolerance to data transfer characteristics as measurable from the network browser, and this is not taught or suggested by the cited art. No new matter is added by this claim.

Based on the foregoing, this application is believed to be in allowable condition, and a notice to that effect is respectfully requested. The Examiner is invited to call the Applicants' Attorney at the number provided below with any questions.

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